

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASHINGTON TOXICS COALITION,	)	
et al.,	)	
	)	No. 2:04-cv-01998-JCC
Plaintiffs,	)	
	)	ANSWER OF INTERVENOR-
v.	)	DEFENDANT CROPLIFE
	)	AMERICA
UNITED STATES DEPARTMENT OF	)	
THE INTERIOR, et al.,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
CROPLIFE AMERICA,	)	
	)	
Intervenor-Defendant.	)	

Intervenor-Defendant CropLife America (“CLA” or “Intervenor”) files this Answer pursuant to Rules 12 and 24 of the Federal Rules of Civil Procedure. Any allegation not specifically admitted below is denied. Answering the numbered paragraphs of the Complaint for Declaratory and Injunctive Relief (filed Sept. 23, 2004), CLA admits, denies, and avers as follows:

1. The first sentence of Paragraph 1 consists of Plaintiffs’ characterization of this lawsuit, which requires no response. The second sentence of Paragraph 1 purports to

1 characterize the regulations (“counterpart regulations”) and Alternative Consultation Agreement  
2 (“ACA”) at issue in this lawsuit, which speak for themselves and are the best evidence of their  
3 content. CLA denies any allegations of the second sentence of Paragraph 1 that are inconsistent  
4 with those documents. The third sentence of Paragraph 1 states a legal conclusion requiring no  
5 response. The fourth sentence of Paragraph 1 is a further characterization of this lawsuit and  
6 states a legal conclusion, neither of which requires a response. Insofar as Paragraph 1 is deemed  
7 to contain any allegations of fact, those allegations are denied.

8 2-11. CLA lacks sufficient information about Plaintiffs to form a belief as to the truth  
9 of the allegations in Paragraphs 2 through 11 and therefore denies those allegations.

10 12. Paragraph 12 is admitted.

11 13. Paragraph 13 is admitted.

12 14. Paragraph 14 is admitted.

13 15. The first sentence of Paragraph 15 is Plaintiffs’ characterization of this lawsuit,  
14 which requires no response. The second sentence of Paragraph 15 states a conclusion of law,  
15 which requires no response.

16 16. Paragraph 16 purports to characterize and summarize the counterpart  
17 regulations and ACA. Those documents speak for themselves and are the best evidence of their  
18 content. CLA denies any allegations of Paragraph 16 that are inconsistent with those documents.

19 17-29. Paragraphs 17 through 29 purport to describe the framework for consultation  
20 under § 7 of the Endangered Species Act (“ESA”) and implementing regulations. The statute and  
21 regulations speak for themselves and are the best evidence of their content. CLA denies any  
22 allegations of Paragraphs 17 through 29 that are inconsistent with the ESA or the cited  
23 regulations.

24 30-33. Paragraphs 30 through 33 purport to summarize provisions of the Federal  
25 Insecticide, Fungicide and Rodenticide Act (“FIFRA”). The statute speaks for itself and is the  
26

1 best evidence of its content. CLA denies any allegations of Paragraphs 30 through 33 that are  
2 inconsistent with FIFRA.

3 34. The first four sentences and the sixth sentence of Paragraph 34 purport to  
4 summarize provisions of FIFRA. The statute speaks for itself and is the best evidence of its  
5 content. CLA denies any allegations of the first four sentences and the sixth sentence of  
6 Paragraph 34 that are inconsistent with FIFRA. The fifth sentence of Paragraph 34 purports to  
7 summarize portions of a General Accounting Office Report, which speaks for itself and is the best  
8 evidence of its content. CLA denies any allegations of the fifth sentence that are inconsistent with  
9 the cited Report. CLA lacks sufficient information to form a belief as to the truth of the  
10 allegations in the seventh sentence of Paragraph 34 and, on that basis, denies same.

11 35. The first three sentences of Paragraph 35 state legal conclusions based on the  
12 definition of “action” in 50 C.F.R. § 402.02, to which no response is required. Insofar as those  
13 sentences are deemed to contain allegations of fact, those allegations are denied. The allegations  
14 of the fourth sentence of Paragraph 35 are denied.

15 36-40. Paragraphs 36 through 40 purport to describe and characterize, with reference  
16 to various Federal Register documents, sundry activities of the Environmental Protection Agency  
17 (“EPA”). The Federal Register documents speak for themselves and are the best evidence of  
18 their content. CLA denies any allegations of Paragraphs 36 through 40 that are inconsistent with  
19 the referenced documents.

20 41. CLA lacks sufficient information to form a belief as to the truth of the  
21 allegations in the first three sentences of Paragraph 41 and, on that basis, denies same. The fourth  
22 and fifth sentences quote selectively from, and purport to summarize and otherwise characterize,  
23 the Re-registration Eligibility Determination (“RED”) for Trufluralin, which speaks for itself and is  
24 the best evidence of its content. CLA denies any allegations of the fourth and fifth sentences that  
25 are inconsistent with the cited RED.  
26

1           42.           Paragraph 42 purports to describe and characterize, with reference to a  
2 Federal Register document, activities of EPA. The Federal Register document speaks for itself  
3 and is the best evidence of its content. CLA denies any allegations of Paragraph 42 that are  
4 inconsistent with the cited document.

5           43.           Paragraph 43 quotes selectively from, and purports to summarize and  
6 otherwise characterize, the RED for Chlorothalonil, which speaks for itself and is the best  
7 evidence of its content. CLA denies any allegations of Paragraph 43 that are inconsistent with the  
8 cited RED.

9           44-46.       Paragraphs 44 through 46 purport to characterize and summarize various  
10 aspects of *Washington Toxics Coalition v. EPA*, No. C01-132C (W.D. Wash.). Insofar as  
11 these paragraphs are deemed to contain allegations of fact, CLA avers that the record of that  
12 litigation speaks for itself and is the best evidence of its content. CLA denies any allegation that is  
13 inconsistent with the official Court record of that litigation.

14           47.           On information and belief, the first sentence of Paragraph 47 is admitted.  
15 CLA lacks sufficient information to form a belief as to the truth of the allegations in the second  
16 sentence of Paragraph 47 and, on that basis, denies same. The remaining sentences of Paragraph  
17 47 purport to quote from and summarize a draft letter, which speaks for itself and is the best  
18 evidence of its content. CLA denies any allegation that is inconsistent with that letter.  
19 Furthermore, the draft letter states legal conclusions, to which no response is required.

20           48.           Paragraph 48 purports to summarize a letter from the *Washington Toxics*  
21 *Coalition* plaintiffs to EPA, which speaks for itself and is the best evidence of its content. CLA  
22 denies any allegation that is inconsistent with that letter.

23           49.           Paragraph 49 cites and purports to characterize various lawsuits. Insofar as  
24 Paragraph 49 is deemed to contain allegations of fact, CLA avers that the records of those  
25 lawsuits speak for themselves and are the best evidence of their content. CLA denies any  
26 allegation that is inconsistent with the official Court records of those proceedings.

1           50.           Paragraph 50 consists of Plaintiffs’ characterization of the alleged activities and  
2 motivation of “the chemical industry and agricultural interests” in conjunction with the counterpart  
3 regulations. Those allegations are too general and speculative to be susceptible to a response, but  
4 insofar as a response is deemed necessary, the allegations are denied. In further response, CLA  
5 avers that it supported the challenged regulations in its rulemaking comments because the  
6 regulations provide multiple benefits, including improving the protection of ESA-listed endangered  
7 and threatened species, efficiently allocating responsibilities among and reducing costs for the  
8 regulating agencies, and decreasing for regulated entities the delays and uncertainty encountered in  
9 the regulatory process and exacerbated by litigation.

10           51-53.       Paragraphs 51 through 53 selectively quote from, and purport to describe,  
11 summarize, and otherwise characterize, a Federal Register advance notice of proposed  
12 rulemaking. That notice speaks for itself and is the best evidence of its content. CLA denies any  
13 allegations of Paragraphs 51 through 53 that are inconsistent with the notice.

14           54-71.       Paragraphs 54 through 71 selectively quote from, and purport to describe,  
15 summarize, and otherwise characterize, sundry documents that discuss EPA’s risk assessment  
16 process, including the “Overview of the Ecological Risk Assessment Process in the Office of  
17 Pesticide Programs” (“Overview document”). Those documents speak for themselves and are  
18 the best evidence of their content. CLA denies any allegations of Paragraphs 54 through 71 that  
19 are inconsistent with the referenced documents.

20           72-85.       Paragraphs 72 through 85 selectively quote from, and purport to describe,  
21 summarize, and otherwise characterize, a Federal Register notice of proposed rulemaking and  
22 other Federal Register documents, various proposed regulations, and the ACA. The referenced  
23 materials speak for themselves and are the best evidence of their content. CLA denies any  
24 allegations of Paragraphs 72 through 85 that are inconsistent with the referenced materials.

25           86-91.       Paragraphs 86 through 91 selectively quote from, and purport to describe,  
26 summarize, and otherwise characterize, an Environmental Assessment (“EA”) and a Federal

1 Register document. The referenced materials speak for themselves and are the best evidence of  
2 their content. CLA denies any allegations of Paragraphs 86 through 91 that are inconsistent with  
3 the referenced materials.

4 92-95. Paragraphs 92 through 95 selectively quote from, and purport to describe,  
5 summarize, and otherwise characterize, a final rule and preamble published in the Federal  
6 Register. That rule and preamble speak for themselves and are the best evidence of their content.  
7 CLA denies any allegations of Paragraphs 92 through 95 that are inconsistent with the final rule  
8 and preamble.

9 96. CLA admits that, on August 26, 2004, EPA and the Services entered into the  
10 ACA. That document speaks for itself and is the best evidence of its content. CLA denies any  
11 allegations of the first sentence of Paragraph 96 that are inconsistent with that document. CLA  
12 lacks sufficient information to form a belief as to the truth of the allegations in the second sentence  
13 of Paragraph 96 and, on that basis, denies same.

14 97. Paragraph 97 selectively quotes from, and purports to summarize, provisions  
15 of the ESA. The statute speaks for itself and is the best evidence of its content. CLA denies any  
16 allegations of Paragraph 97 that are inconsistent with the statute.

17 98-100. Paragraphs 98 through 100 purport to describe, summarize, and otherwise  
18 characterize the counterpart regulations, the ACA, and the ESA. The counterpart regulations, the  
19 ACA, and the ESA speak for themselves and are the best evidence of their content. CLA denies  
20 any allegations of Paragraphs 98 through 100 that are inconsistent with the counterpart  
21 regulations, the ACA, and the ESA.

22 101. Paragraph 101 states a legal conclusion, which requires no response. Insofar  
23 as Paragraph 101 is deemed to contain allegations of fact, those allegations are denied.

24 102. Paragraph 102 selectively quotes from, and purports to summarize, provisions  
25 of the ESA. The statute speaks for itself and is the best evidence of its content. CLA denies any  
26 allegations of Paragraph 102 that are inconsistent with the statute.

1           103.       The first three sentences of Paragraph 103 consist of Plaintiffs'  
2       characterization of “insure,” which requires no response. Insofar as Plaintiffs rely on the cited  
3       dictionary definition, that dictionary speaks for itself and is the best evidence of its content. CLA  
4       denies any allegations of the first three sentences of Paragraph 103 that are inconsistent with the  
5       cited dictionary. The fourth sentence of Paragraph 103 states a legal conclusion, which requires  
6       no response.

7           104-110. Paragraphs 104 through 110 purport to describe, summarize, and otherwise  
8       characterize the counterpart regulations, the ACA, and the ESA. The counterpart regulations, the  
9       ACA, and the ESA speak for themselves and are the best evidence of their content. CLA denies  
10      any allegations of Paragraphs 104 through 110 that are inconsistent with the counterpart  
11      regulations, the ACA, and the ESA.

12          111.       Paragraph 111 states a legal conclusion, which requires no response. Insofar  
13      as Paragraph 111 is deemed to contain allegations of fact, those allegations are denied.

14          112.       Paragraph 112 selectively quotes from, and purports to summarize, provisions  
15      of the ESA. The statute speaks for itself and is the best evidence of its content. CLA denies any  
16      allegations of Paragraph 112 that are inconsistent with the statute.

17          113.       The allegations of Paragraph 113 are denied.

18          114.       Paragraph 114 purports to describe, summarize, and otherwise characterize  
19      the counterpart regulations and the ESA. The counterpart regulations and the ESA speak for  
20      themselves and are the best evidence of their content. CLA denies any allegations of Paragraph  
21      114 that are inconsistent with the counterpart regulations and the ESA.

22          115-121. Paragraphs 115 through 121 appear to describe, summarize, and otherwise  
23      characterize the counterpart regulations, the Overview document, and the ACA, which speak for  
24      themselves and are the best evidence of their content. CLA denies any allegations of Paragraphs  
25      115 through 121 that are inconsistent with those regulations and other referenced materials.

26      Beyond that, insofar as Paragraphs 115 through 121 are deemed to contain other allegations of

1 fact, CLA lacks sufficient information to form a belief as to the truth of those allegations and, on  
2 that basis, denies same.

3 122. Paragraph 122 states a legal conclusion, which requires no response. Insofar  
4 as Paragraph 122 is deemed to contain allegations of fact, those allegations are denied.

5 123-127. Paragraphs 123 through 127 purport to describe, summarize, and otherwise  
6 characterize the counterpart regulations and other regulations, the ACA, and the ESA. The  
7 regulations, the ACA, and the ESA speak for themselves and are the best evidence of their  
8 content. CLA denies any allegations of Paragraphs 123 through 127 that are inconsistent with the  
9 regulations, the ACA, and the ESA.

10 128. Paragraph 128 states a legal conclusion, which requires no response. Insofar  
11 as Paragraph 128 is deemed to contain allegations of fact, those allegations are denied.

12 129-133. Paragraphs 129 through 133 purport to describe, summarize, and otherwise  
13 characterize the counterpart regulations, the Overview document, and the ESA. The regulations,  
14 the Overview document, and the ESA speak for themselves and are the best evidence of their  
15 content. CLA denies any allegations of Paragraphs 129 through 133 that are inconsistent with the  
16 regulations, the Overview document, and the ESA.

17 134. Paragraph 134 states a legal conclusion, which requires no response. Insofar  
18 as Paragraph 134 is deemed to contain allegations of fact, those allegations are denied.

19 135. Paragraph 135 purports to describe, summarize, and otherwise characterize  
20 the counterpart regulations and other regulations, which speak for themselves and are the best  
21 evidence of their content. CLA denies any allegations of Paragraph 135 that are inconsistent with  
22 the regulations.

23 136. Paragraph 136 selectively quotes from the Services' Consultation Handbook  
24 and from a dictionary, both of which speak for themselves and are the best evidence of their  
25 content. CLA denies any allegations of Paragraph 136 that are inconsistent with the referenced  
26 materials.



1 137-138. Paragraphs 137 and 138 quote from, and purport to describe, summarize, and  
2 otherwise characterize, the Consultation Handbook, which speaks for itself and is the best  
3 evidence of its content. CLA denies any allegations of Paragraphs 137 and 138 that are  
4 inconsistent with the Consultation Handbook.

5 139-140. Paragraphs 139 and 140 quote from, and purport to describe, summarize, and  
6 otherwise characterize, the counterpart regulations and other regulations, which speak for  
7 themselves and are the best evidence of their content. CLA denies any allegations of Paragraphs  
8 139 and 140 that are inconsistent with the regulations.

9 141. Paragraph 141 states a legal conclusion, which requires no response. Insofar  
10 as Paragraph 141 is deemed to contain allegations of fact, those allegations are denied.

11 142-143. Paragraphs 142 and 143 quote from, and purport to describe, summarize, and  
12 otherwise characterize, the National Environmental Policy Act (“NEPA”) and regulations  
13 implementing NEPA, which speak for themselves and are the best evidence of their content.  
14 CLA denies any allegations of Paragraphs 142 and 143 that are inconsistent with the NEPA and  
15 the implementing regulations.

16 144. The first and last sentences of Paragraph 144 state legal conclusions, which  
17 require no response. The remaining sentences of Paragraph 144 purport to describe the EA for  
18 the counterpart regulations and the Services’ rationale for the EA. The EA speaks for itself and is  
19 the best evidence of its content. CLA denies any allegations of these sentences of Paragraph 144  
20 that are inconsistent with the EA.

21 145. Paragraph 145 quotes from, and purports to describe, summarize, and  
22 otherwise characterize, regulations implementing NEPA, which speak for themselves and are the  
23 best evidence of their content. CLA denies any allegations of Paragraph 145 that are inconsistent  
24 with the regulations.

25 146-147. Paragraphs 146 and 147 quote from, and purport to describe, summarize, and  
26 otherwise characterize, the EA, which speaks for itself and is the best evidence of its content.

1 CLA denies any allegations of these sentences of Paragraphs 146 and 147 that are inconsistent  
2 with the EA.

3 148. Paragraph 148 purports to describe, summarize, and otherwise characterize,  
4 NEPA and regulations implementing NEPA, which speak for themselves and are the best  
5 evidence of their content. CLA denies any allegations of Paragraphs 148 that are inconsistent  
6 with NEPA and the implementing regulations.

7 149. Paragraph 149 consists of Plaintiffs' views on the legality and advisability of  
8 the counterpart regulations under NEPA, which requires no response. Insofar as a response is  
9 deemed necessary, the allegations of Paragraph 149 are denied.

10 150. The first sentence of Paragraph 150 states a legal conclusion, which requires  
11 no response. The remaining sentences of Paragraph 150 quote from, and purport to describe,  
12 summarize, and otherwise characterize, the Federal Register preamble to the counterpart  
13 regulations, which speaks for itself and is the best evidence of its content. CLA denies any  
14 allegations of those sentences that are inconsistent with the referenced preamble.

15 151. Paragraph 151 states a legal conclusion, which requires no response. Insofar  
16 as Paragraph 151 is deemed to contain allegations of fact, those allegations are denied.

17 The remainder of the Complaint consists of Plaintiffs' Prayer for Relief, which requires no  
18 response.

### 19 **GENERAL DENIAL**

20 CLA denies each and every allegation in Plaintiffs' Complaint not specifically admitted  
21 herein.

### 22 **AFFIRMATIVE DEFENSES**

#### 23 **First Affirmative Defense**

24 Plaintiffs lack standing to raise some or all of their claims.

#### 25 **Second Affirmative Defense**

26 Some or all of Plaintiffs' claims are not ripe for review.

1 **Third Affirmative Defense**

2 Plaintiffs fail to state a claim upon which relief can be granted.

3 \* \* \*

4 WHEREFORE, Intervenor respectfully requests that this Court deny all relief sought by  
5 Plaintiffs, grant judgment to Defendants and Intervenor, and grant Defendants and Intervenor such  
6 additional relief as the Court may deem just and proper.

7 Respectfully submitted,

8  
9 Dated: December 14, 2004

CROWELL & MORING LLP

11 s/ J. Michael Klise

J. Michael Klise (*pro hac vice*)

12 jmklise@crowell.com

13 Steven P. Quarles (D.C. Bar No. 351668)

14 Thomas R. Lundquist (D.C. Bar No. 968123)

1001 Pennsylvania Ave., N.W.

Washington, DC 20004

15 (202) 624-2500

16 LEARY FRANKE DROPPERT PLLC

17 J.J. Leary, Jr. (WSBA No. 08776)

18 1500 Fourth Avenue, Suite 600

19 Seattle, WA 98101

20 (206) 343-8835

21 Attorneys for Intervenor-Defendant CropLife  
22 America